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40 CFR 281 - Missouri: Final Approval of Missouri Underground Storage Tank Program

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-7816-1]

Missouri: Final Approval of Missouri Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final determination on application of State of Missouri for final approval.

SUMMARY: Missouri has applied to EPA for final approval of its Underground Storage Tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Missouri application and has made a final determination that Missouri's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Missouri to operate its program.

DATES: Final approval for Missouri shall be effective October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Garwood, EPA Region 7, ARTD/STOP, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7268, or by e-mail at garwood.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving state programs in lieu of the Federal program. EPA promulgated state program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the state program is

"no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.

II. Missouri UST Program

The Missouri Department of Natural Resources (MDNR) is the lead implementing agency for the UST program in Missouri. MDNR has broad statutory authority to regulate UST releases under Sections 260.500 through 260.550 of the Revised Statutes of Missouri (RSMo.) and more specific authority to regulate the installation, operation, maintenance, and closure of USTs under sections 319.100 through 319.139, RSMo., the Missouri UST Law. Additional authorities, in particular the appeals process through the Missouri Clean Water Commission, are found at Chapter 644, RSMo., the Missouri Clean Water Law.

The State of Missouri submitted a state program approval application to EPA by letter dated July 28, 2003. EPA evaluated the information provided and determined the application package met all requirements for a complete program application. On December 11, 2003, EPA notified Missouri that the application package was complete.

Included in the state's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the state's statutory and regulatory authority and details concerning areas where the state program is broader in scope or more stringent than the Federal program. Also included was a transmittal letter from the Governor of Missouri requesting program approval, a description of the Missouri UST program, a demonstration of Missouri's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of EPA and the Missouri Department of Natural Resources, and copies of all applicable state statutes and regulations.

Specifically, the Missouri UST program has requirements that are no less stringent than the Federal requirements at 40 CFR 281.30 New UST system design, construction, installation, and notification; 40 CFR 281.31 Upgrading existing UST systems; 40 CFR 281.32 General operating requirements; 40 CFR 281.33 Release detection; 40 CFR 281.34 Release reporting, investigation, and confirmation; 40 CFR 281.35 Release response and corrective action; 40 CFR 281.36 Out-of-service UST systems and closure; 40 CFR 281.37 Financial responsibility for UST systems

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containing petroleum; and 40 CFR 281.39 Lender Liability.

Additionally, the Missouri UST program has adequate enforcement of compliance, as described at 40 CFR 281.40 Requirements for compliance monitoring program and authority; 40 CFR 281.41 Requirements for enforcement authority; 40 CFR 281.42 Requirements for public

participation; and 40 CFR 281.43 Sharing of information.

On May 5, 2004 (69 FR 25053), EPA published a tentative decision announcing its intent to grant Missouri final approval. Further background on the tentative decision to grant approval is available by contacting Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas, 66101, (913) 551-7268, or by e-mail at garwood.linda@epa.gov.

Along with the tentative determination, EPA announced the opportunity for public comment. All comments needed to be received at EPA by June 4, 2004. Also, EPA provided notice that a public hearing would be provided but only if significant public interest on substantive issues was shown. EPA did not receive any significant comments and no public hearing was held.

III. Decision

EPA concludes that the State of Missouri's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Missouri is granted final approval to operate its UST program. The State of Missouri now has responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program, except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Missouri also has primary enforcement responsibility, for the USTs it regulates, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Statutory and Executive Order Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action authorizes State requirements for the purpose of RCRA 9004 and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely authorizes State

requirements as part of the State underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 ``Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Under RCRA 9004, EPA grants approval of a State's program as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State program application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 13, 2004.

James B. Gulliford,
Regional Administrator, Region 7.
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